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Additional Information

Level 1 Regulation
Credit Rating Agencies Regulation (CRAR) Regulation (EC) No 1060/2009

Topic
CRA Regulation

Subject Matter
Article 7 MAR and Article 10(2a) CRAR – Distribution of subscription ratings and disclosure of inside information (ESMA33-5-87 Q&A 15)

Question
Where a CRA distributes its credit ratings by subscription, would disclosure of credit ratings only to its subscribers constitute "disclosure to the public" within the meaning of Article 10(2a) and would subscribers be permitted to trade on the basis of these credit ratings?

ESMA Answer

17-07-2023

Original language

Yes.

Further to their disclosure to a distribution list of subscribers, credit ratings are no longer to be considered inside information.

Article 2 of Regulation No 1060/2009 (Credit Rating Agencies Regulation or “CRAR”) “applies to credit ratings issued by credit rating agencies registered in the Union and which are disclosed publicly or distributed by subscription” and explicitly excludes from its scope those “not intended for public disclosure or distribution by subscription”.

Article 10(2a) of CRAR provides a presumption that credit ratings and rating outlooks are to be deemed inside information until their “disclosure to the public” without further specifying in which cases such public disclosure occurs.

Depending on the business model of the CRA, certain credit ratings could be disclosed exclusively to subscribers of distribution lists subject to the payment of a license fee and, therefore, they should no longer be deemed as inside information pursuant to Article 10(2a) of CRAR.

Article 7(1)(a) of MAR defines inside information as an information “that has not been made public” regardless of whom has published the information or by which means.

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